

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
May 17, 2016

v

ROBERT FRANCIS HANLEY,  
  
Defendant-Appellant.

No. 325216  
Delta Circuit Court  
LC No. 14-008929-FH

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Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of owning or possessing equipment to be used for the purpose of manufacturing methamphetamine, MCL 333.7401c(1)(b). His appeal centers on alleged and unpreserved prosecutorial misconduct. We agree that a portion of the prosecutor’s closing argument crossed the line of proper advocacy. However, defendant has failed to establish that the prosecutor’s conduct denied him a fair trial. We affirm.

I

The Upper Peninsula Substance Enforcement Team (UPSET) executed a search warrant at defendant’s home based on information that defendant was engaged in the manufacture of methamphetamine. UPSET recovered various ingredients and devices consistent with methamphetamine production, including a bottle of Red Devil Lye; a “reaction vessel” with a “solid and liquid substance inside” (no chemical reaction was taking place at the time); Mason jars, one of which contained a liquid and “balled up coffee filters” with “a crusty substance on them”; a red pipe cutter; a cut lithium battery; and an “almost empty can of Coleman fuel.” An expert witness for the prosecution testified that these items are typically used to manufacture methamphetamine. Records admitted from National Precursor Log Exchange (NPLEx), a databank used to monitor purchases of methamphetamine precursor medications sold over-the-counter, revealed that several of defendant’s close friends had purchased quantities of drugs containing pseudoephedrine during the preceding year.

Defendant contends that portions of the prosecutor’s closing argument denied him a fair trial and due process of law, and that his trial counsel performed ineffectively by failing to raise any objections. Defendant similarly takes issue with the prosecutor’s elicitation of reputation evidence regarding defendant’s girlfriend.

## II

During closing argument, the prosecutor made several statements that supply the basis for defendant's appellate claim of prosecutorial misconduct. Specifically, defendant challenges the following italicized sentences within the prosecutor's argument as improper appeals to the jurors' civic duty:

I told you during my opening statement that we were talking about a very concerning situation that's facing our country right now. A very concerning situation that's overflowing into Delta County right now, and I refer to it as an epidemic. . . . *This is a drug epidemic.* Specifically what we heard about over the last day and a half was an epidemic involving methamphetamine. And you've heard from and seen exhibits from the officers, the gentlemen that are on the front line fighting the epidemic. *You heard expert testimony from someone who knows everything there is to know really about how meth is made and how dangerous this thing can be.*

*To think individuals are out there combining gas and lithium and cold medicines in plastic containers in their basements and garages is just downright scary. You've heard about the dangers associated with it, and we've seen how this stuff is made.* The exhibits document and walk through the search of the residence, and you can see all the components used during the process. I told you that this was strictly a case about the components to manufacture methamphetamine. This - - and I've been completely upfront with you, you were not going to hear - - you did not hear evidence that the defendant possessed methamphetamine on the date in question. That's not an element that I have to prove - - possession of methamphetamine. That's not what this case is about. This case is about possessing the components, the chemicals, the laboratory equipment intended for meth production.

\* \* \*

You've got 16 photos documenting step-by-step how this investigation was conducted, and you can see how topnotch and professional these law enforcement officers are. *From the suit displayed in Photo 1, doesn't that speak volumes about how dangerous this stuff is?* And you walk through and they take pictures every step of the way to not disturb it, so today and yesterday we could bring these to you and show you exactly what happened almost a year ago. So we have it step-by-step, Exhibit 2 is they walk in to the basement with all these thing[s] found. Exhibit 3 you have the coffee filters and the Mason jars, the Red Devil lye, the one pot Gatorade bottle, and then continuing into the garage and out onto the safety blanket, where again the law enforcement professionalism is just documented how out - - freezing cold. I remember December of 2013 as one of the coldest winters that I can remember since I've been alive. And for these guys to be out there snapping photos and, you know, doing their job - - and they'll tell you, they're just doing their job. They're not looking for a pat on the back. *But their testimony and this evidence really speaks volumes about what these guys are*

*out there doing on the front lines of trying to battle this problem in our community.* [Emphasis added.]

We review unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). “Reversal is warranted only when [plain error] resulted in the conviction of an actually innocent defendant or . . . seriously affected the fairness, integrity or public reputation of [the] judicial proceedings, independent of defendant’s innocence.” *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (quotation marks and citation omitted).

A civic duty argument appeals to “the fears and prejudices” of the jury. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

A prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant, they will assist in the solution of some pressing social problem. The amelioration of society’s woes is far too heavy a burden for the individual criminal defendant to bear. [*United States v Monaghan*, 741 F2d 1434, 1441 (DC Cir, 1984).]

Defendant’s guilt rose or fell on whether he maintained a methamphetamine laboratory in his home. That a “drug epidemic” may exist in Delta County was not the subject of any testimony in this case, nor should it have been. The prosecutor’s comments regarding “a very concerning situation that’s overflowing into Delta County right now” and the “battle . . . in our community” fought by law enforcement officers did not speak to whether defendant committed the offense alleged. Rather, these portions of the prosecutor’s argument appealed to the community’s interest in alleviating the drug trade. As such, they were improper and rise to the level of plain error. Nevertheless, we are confident that given the substantial evidence of defendant’s guilt, these comments did not affect the outcome of the trial or seriously affect the fairness, integrity, or public reputation of the proceedings. Reversal is unwarranted.

Defendant also contends that the prosecutor engaged in misconduct by eliciting the following testimony from a witness who allegedly purchased pseudoephedrine for defendant’s operation:

Q. What did you think it was going to be used for?

A. To make meth.

Q. Okay. When you were at home - - I guess let me take a step back. Why do you think that was what it was going to be used for?

A. Because the girlfriend of the defendant is known for making crystal meth, and it was about - - it was bound to happen.

Q. Okay. That’s Farrah Trzeciak?

A. Yes.

Defendant argues that this “inadmissible hearsay community reputation of Farrah” constitutes evidence of “other acts” and “had no place in the trial.” Again, even if we were to accept this rather undeveloped argument regarding unpreserved error, we would find no prejudice warranting relief.

### III

Defendant argues that defense counsel rendered ineffective assistance by failing to object to the prosecutor’s alleged civic duty argument and to the cited testimony. A defendant’s claim of ineffective assistance of counsel “is a mixed question of fact and constitutional law.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Generally, we review findings of fact for clear error and questions of law de novo. *Id.* However, because defendant did not bring a motion for a new trial or an evidentiary hearing based on his claim of ineffective assistance of counsel, our review is limited to mistakes apparent on the existing record. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012).

A criminal defendant has the fundamental right to the effective assistance of counsel. *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984). To establish ineffective assistance of counsel, the defendant must show: (1) “that counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms,” and (2) that there is “a reasonable probability that but for counsel’s errors, the result of the proceedings would have been different.” *People v Galloway*, 307 Mich App 151, 157-158; 858 NW2d 520 (2014), rev’d in part on other grounds 498 Mich 902; 870 NW2d 893 (2015) (quotation marks and citations omitted).

We need not concern ourselves with the first prong of this test, as even if defense counsel’s performance was deficient, we discern no reasonable probability that objections would have altered the outcome of defendant’s trial. The equipment and chemical material found in defendant’s home corresponded neatly to the recipe for “cooking meth” described by the prosecution’s expert witness. Defendant and his friends purchased substantial quantities of the main ingredient of methamphetamine: pseudoephedrine. Defendant’s fingerprints were found on a glass jar similar to those that typically contain the last portions of the meth-cooking process. We conclude that defendant has failed to demonstrate that he suffered prejudice caused by the absence of objections.

We affirm.

/s/ Elizabeth L. Gleicher  
/s/ David H. Sawyer  
/s/ Michael J. Kelly